IN THE SUPREME COURT OF THE STATE OF DELAWARE

DALE BOWEN,	)	
	)	No. 620, 2005
Defendant Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
STATE OF DELAWARE,	)	Cr. ID. No. 0410015936
	)	
Plaintiff Below,	)	
Appellee.	)	

Submitted: May 31, 2006
Decided: July 24, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

O R D E R

This 24th day of July, 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

(1) Dale Bowen appeals from his convictions for Carjacking First Degree, two counts of Possession of a Deadly Weapon During the Commission of a Felony, and Possession of a Deadly Weapon by a Person Prohibited. Bowen claims that the trial judge committed plain error by not *sua sponte* issuing an instruction limiting the evidence on his prohibited status. Although the trial judge failed to give a proper instruction limiting the evidence of Bowen's criminal record, the trial judge's failure to do so did not "clearly prejudice" Bowen's "substantial rights" nor did it jeopardize the fairness and integrity of the trial

process. We find that this failure to so instruct the jury *sua sponte* was not plain error. Accordingly, we affirm the judgment of the Superior Court.

(2) On October 14, 2005 at approximately 5:00 p.m., Bowen robbed Lauriece Aguirre while she was withdrawing money from an enclosed ATM at the College Square Shopping Center in Newark. As the ATM dispensed the cash, Bowen grabbed Aguirre from behind with one arm and held a knife to her throat with the other. He demanded the cash and Aguirre's car keys, which she had placed on the ATM's counter. Bowen fled the scene in Aguirre's car, which was parked directly outside the ATM, and Aguirre went into a nearby Pathmark to call the police. The police recovered the car approximately half an hour later and identified Bowen as a suspect shortly thereafter. Aguirre further identified Bowen through a photographic lineup.

(3) In an audiotaped statement and at trial, Bowen admitted robbing Aguirre but denied that he used a knife and denied the carjacking. He claimed that he possessed a sharpened metal object that he had found along some railroad tracks, but not a knife. Aguirre, however, clearly testified that she saw a kitchen-style knife with a serrated blade. Bowen argued that reasonable doubt existed about the carjacking charge, and about whether he used a deadly weapon to rob Aguirre.

(4) Because Bowen refused to stipulate to having a prior felony conviction, the State proffered a certified court record of his prior conviction to establish his prohibited status. The trial judge admitted the certified court record. Bowen neither objected nor requested a relevant limiting instruction. The jury convicted him of all charges. The trial judge, thereafter, declared Bowen a habitual offender and sentenced him to 56 years at Level V, suspended after 54 years for 2 years probation.

(5) On appeal, Bowen contends that when evidence of prior bad acts is admitted, *Weber v. State*[1] requires a relevant limiting instruction as a matter of due process. Bowen claims that the trial judge should have *sua sponte* issued a limiting instruction that the jury could only consider his 2002 conviction for Robbery Second Degree to establish that he was prohibited from possessing a deadly weapon and that the jury could not use evidence of his prior robbery conviction to support a general inference of bad character or a propensity to commit another crime. Bowen argues that the trial judge's failure to issue the instruction constituted plain error because the evidence of his prior conviction could have unfairly predisposed the jury to convict him for the carjacking and weapon possession offenses.

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[1] *Weber v. State*, 547 A.2d 948, 963 (Del. 1998) (reversing a conviction where the trial judge admitted evidence of prior bad acts, despite timely objection by Weber, without issuing a limiting instruction to the jury). The *Weber* Court held that a limiting instruction is mandatory under those circumstances. *Id*.

(6) Because Bowen failed to object to the introduction of evidence of his prior conviction or to request a limiting instruction under D.R.E. 105, we review for plain error.[2] Bowen concedes as much. To constitute plain error, the error complained of must be "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[3] We limit review to "material defects which are apparent on the face of the record, which are basic, serious, and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[4]

(7) Here, the record discloses no evidence of unfair prejudice or that the jury used the fact of Bowen's prior robbery conviction "in an impermissible way."[5] Because the State introduced only the date and nature of his prior conviction for the limited and specific purpose of establishing a statutory element of a charged offense, the potential for juror misunderstanding and misuse of the evidence was minimal.

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2 DEL. SUPR. CT. R. 8; D.R.E. 103(d); *Zimmerman v. State*, 565 A.2d 887, 890 (Del. 1989).

3 *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (citing *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982)).

4 *Id*. (citing *Bromwell v. State*, 427 A.2d 884, 893 n.12 (Del. 1981)).

5 *See Sykes v. State*, 588 A.2d 1143 (Del. 1991) (Order).

(8) The record also shows that a reasonable jury could have convicted Bowen "without relying on an impermissible character inference."[6] At trial, Aguirre described the weapon as a "steak knife" with "serrated edges" and a "blue handle." Defense counsel did little to diminish the force of Aguirre's testimony on crossexamination. Despite the fact that the State did not offer the knife as evidence and that Bowen claimed that he only possessed a metal object that "may have looked sharp," a reasonable jury could have concluded that he used a knife in the robbery. Because the contested issue about the carjacking charge focused on the immediacy of the car to Aguirre, Bowen's character would have no bearing on the issue.

(9) A finding that the trial judge's failure to issue a limiting instruction *sua sponte* did not constitute plain error is consistent with our holding in *Williams v. State*.[7] In *Williams*, we distinguished *Weber*, where defense counsel made a timely objection to the admission of evidence of prior misconduct. In *Williams*, however, defense counsel made no such objection, and we found that the "lack of a limiting instruction, in the context of prior crimes, is not plain error."[8]

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6 *See Andrus v. State*, 844 A.2d 991 (Del. 2004) (Order).

7 *Williams v. State*, 796 A.2d 1281 (Del. 2002).

8 *Id*. at 1290.

(10) Because we are satisfied that the absence of a limiting instruction concerning Bowen's prior conviction was not unduly prejudicial and did not measurably affect the outcome of the trial, and based on our decision in *Williams*, we conclude that the trial judge's failure to issue a limiting instruction *sua sponte* did not constitute plain error.

NOW, THEFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED.**

By the Court:

/s/ Myron T. Steele
Chief Justice